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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ROGER ANSON, Plaintiff and Appellant, v. ST. MICHAEL'S EPISCOPAL CHURCH, INC., et al., Defendants and Respondents.	G040384 (Super. Ct. No. 06CC05085) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Daniel J. Didier, Judge. Affirmed.

Roger Anson, in pro. per., for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

Roger Anson filed his complaint in April of 2006. He alleged that Father Juan Jimenez of St. Michael's Episcopal Church, had granted him permission to park his motor home in the parking lot of St. Michael's, and to sleep in it there. Anson further alleged he had slept in the motor home on the night of April 12, 2005, but left the next day. When he returned to the church on the evening of April 13, 2005, the motor home had been removed.

Anson alleged that "[s]omeone from the church reported the motor home abandoned [and the] motor home was towed . . . ." Although Anson had given Jimenez contact information, including a phone number, Jimenez did not contact him about the removal. As a result of the motor home's removal, Anson complained he was required to sleep on the streets, and thus "forced to go where he did not want to go."

Based upon those alleged facts, Anson claimed defendants, including Jimenez, St. Michael's Episcopal Church, Inc., and the towing company which had removed the vehicle, were liable on theories of breach of contract and false imprisonment. His complaint sought compensatory damages and emotional distress damages, as well punitive damages for the false imprisonment, but did not specify any amounts. He alleged for jurisdictional purposes that the case was "an unlimited civil case (exceeds $25,000)," but sought only damages "according to proof," and asserted that "[a] statement of actual and punitive damages is not required pursuant to Code of Civil Procedure section 425.10."

The company which towed the motor home was subsequently dismissed from the case. The remaining two defendants, Jimenez and St. Michael's, failed to respond to the complaint, and their defaults were entered in February of 2008.

On March 3, 2008, Anson filed a document entitled "Notice to St. Michael's Episcopal Church, Inc., Juan Jimenez of Plaintiff's Intent to Seek Punitive Damages" reflecting that Anson "reserves the right to seek $200,000 in punitive damages." The record does not include any evidence the document was served on either

defendant. On that same date, the court received his statement of damages, in which he claimed to be seeking $100,000 in emotional distress damages, as well as $50,000 in property damage, against both Jimenez and St. Michael's. That document was formally filed on April 8, 2008, the date of the default prove-up hearing. In place of a completed proof of service, the statement of damages merely reflects, in a handwritten statement, "see sheriff's proof of service."

Anson testified at the April 8, 2008 default prove-up hearing. In response to questions posed by the court, Anson explained that Jimenez had granted him permission to park the mobile home at the church approximately eight weeks before it was towed away. He gave nothing in exchange for the privilege of parking – he did not pay fees or do any work for the church. As Anson characterized it, "[i]t was totally free as far as I understood."

The court then explained to Anson that "[f]or there to be a contract, there has to be consideration. In other words, if you are going to have a contract, there's got to be something given in exchange for his promise, rather than – or else this is not a binding contract." Anson reiterated that "[t]here was no monetary exchange or return of services."

Anson stated that after the motor home was removed from the church premises, he attempted to speak with Jimenez, but "[h]e wouldn't talk to me." Anson did locate the motor home in a towing yard, but did not attempt to reclaim it. As he explained: "I had no place to put it. And I had no place to put the possessions that were in it. I have a storage room that is full. I can't afford a second one. So what was in it, stayed in it." Anson also pointed out the difficulty involved in retrieving the possessions inside the vehicle, which "would involve transfer – putting it all in the transit bus and tak[ing] numerous trips."

In accordance with his statement of damages, Anson requested $50,000 in damages for lost property, primarily due to the value of documents and other items

contained in the motor home, plus $100,000 in emotional distress damages and $100,000 in punitive damages.

The day after the prove-up hearing, the court issued its judgment. The court ruled that Anson's facts failed to establish the existence of any enforceable contract, as he had not promised or given consideration in exchange for Jimenez's promise to park the motor home on the church's premises. The court concluded that at most, Anson had established a gratuitous bailment relationship. The court also noted that Anson had the opportunity to reclaim his property, but elected not to do so. And finally, the court found that Anson had proved no false imprisonment. Consequently, the court ordered judgment be entered in favor of defendants.

I

Anson first asserts the court erred by failing to heed the rule that a defendant's default "is deemed an admission . . . of the material allegations of the complaint . . . ." We disagree. While Anson has correctly stated the well-settled rule (*Ellis v. Rademacher* (1899) 125 Cal. 556, 557; *Falahati v. Kondo* (2005) 127 Cal.App.4th 823, 829, fn. 6) he has misapprehended what occurred in this case. The court here did assume the truth of the facts alleged in Anson's complaint, but then concluded that *those facts* did not entitle Anson to an award of damages.

In doing so, the court acted correctly. "A default admits the material allegations of the complaint, and no more . . . . [T]he relief given to the plaintiff cannot exceed that which the law awards as the legal conclusion from the facts alleged [citing section 580]." (*Ellis v. Rademacher, supra,* 125 Cal. at p. 557.)

In this case, Anson alleged – and by default Jimenez and St. Michael's admitted – facts *which did not demonstrate the existence of an enforceable contract*. Simply put, Anson did not allege that he had given anything (for example, promised payments or services) *in exchange* for the right to keep his motor home in the church's parking lot. And at the hearing, he staunchly denied that any such consideration had been

part of the arrangement. Absent such an exchange – referred to in law as "consideration," Jimenez's promise was merely a gratuitous gesture, and could not be legally enforced as a contract. As explained in *Scottsdale Ins. Co. v. Essex Ins. Co.* (2002) 98 Cal.App.4th 86, 94-95, "[i]n order for a contract to be valid, the parties must exchange promises that represent legal obligations. [Citation.] An agreement is illusory and there is no valid contract when one of the parties assumes no obligation."

Nor did Anson's "contract" facts add up to any other cognizable cause of action. The cause of action closest to this factual situation would be promissory estoppel, in which plaintiff alleges defendant made him a promise, knowing he would rely, and upon which plaintiff did rely to his detriment. In such cases, the detriment suffered by plaintiff because of his reasonable reliance on defendant's promise substitutes for the consideration normally required to render such a promise enforceable under contract law. (*C & K Engineering Contractors v. Amber Steel Co.* (1978) 23 Cal.3d 1, 6.)

But Anson neither alleged reliance in his complaint nor offered any evidence to support such a theory at his prove-up hearing. "Detrimental reliance" requires a showing that as a result of defendant's promise, plaintiff gave up something – perhaps another opportunity – which he would have taken in the absence of the promise. In this situation specifically, it would have meant Anson had left his motor home on the church's property *because* Jimenez assured him it would be allowed to stay, and that absent such an assurance, Anson *would have done something different with it*. Having induced Anson to give up that other opportunity, Jimenez might then be forced to pay damages caused by the breach of his gratuitous promise.

However, Anson's testimony was contrary to any inference of such reliance. He explicitly stated that he had not even bothered to reclaim his motor home from the tow yard, because he had *nowhere else to put it*. Thus, according to Anson's testimony, without the opportunity to park the motor home at the church, he had no choice but to abandon it, along with all its contents. That contention undermines any

assertion Anson had incurred any detriment by accepting Jimenez's offer to let him park it at the church. In fact, the only reasonable inference is that Jimenez's offer allowed Anson to keep the mobile home for several weeks longer than he otherwise would have. That inference undermines any claim of promissory estoppel against either Jimenez or the church.

Anson's claim of "false imprisonment" fares no better. Again, the court assumed the truth of the facts stated in his complaint, but was forced to conclude they did not entitle him to relief on a theory of false imprisonment. False imprisonment requires that plaintiff himself have been *restrained* in some way – either by being forcibly confined or forced to go somewhere where he does not want to go. "The elements of a tortious claim of false imprisonment are: (1) the nonconsensual, intentional confinement of a person, (2) without lawful privilege, and (3) for an appreciable period of time, however brief." (*Easton v. Sutter Coast Hospital* (2000) 80 Cal.App.4th 485, 496; see also *City of Newport Beach v. Sasse* (1970) 9 Cal.App.3d 803, 810.) "The tort requires some restraint of the person and that he be deprived of his liberty or compelled to remain where he does not wish to remain, or go where he does not wish to go [citation] . . . ." (*Collins v. County of Los Angeles* (1966) 241 Cal.App.2d 451, 459-460.)

In this case, Anson did not contend *he* was forcibly restrained in any way – only that his mobile home was towed from the church's property. His allegation that the removal of his mobile home from church property forced him "to go where he did not want to go," while mimicking the language of case law defining a false imprisonment, does not satisfy the elements of the claim. Anson did not contend defendants forced him to *go* anywhere in particular, such as might support a claim based upon interference with his freedom of movement. Nor did he allege that the place he ended up had been of defendants' choosing, rather than his own. Instead, Anson's true complaint is that he was no longer allowed to stay where he preferred, in his mobile home, on the church's property, as he had in the past. And because he claimed no enforceable contract which

entitled him to stay there, the church was "lawfully privileged" to deprive him of that preference. Consequently, even assuming the truth of all the allegations in Anson's complaint, it did not entitle him to any relief on a theory of false imprisonment.

Finally, we must reject Anson's assertion his complaint was sufficient to demonstrate defendants were "legally liable for the unlawful removal of [his] motor home under the theory of a gratuitous bailment." Anson supports his contention with nothing more than the definition of a bailment contained in Black's Law Dictionary, 8th Edition. He offers no authority for his contention that defendants might be held liable as bailees under California law in the circumstances of this case, and we are aware of none.

II

Anson also contends the court acted improperly in connection with the default prove-up, because the bench officer questioned him about factual matters, and relied upon his own legal research in reaching a decision. According to Anson, "the function of the trial court is to rule on law or fact presented by either party [and] [w]hen the trial court takes on the task of questioning one of the parties without the presence of the other party, the court is acting as counsel for the unrepresented party." Implicitly, Anson is asserting the court has no authority to think independently about the issues presented.

Anson is incorrect. "Not only may [the judge] join in questioning and take part in the determination of the truth, but he has a duty to see that both sides receive a fair trial and that justice is done." (*People v. Alfaro* (1976) 61 Cal.App.3d 414, 427.) The court in this case did not act improperly.

III

Anson's final contentions all relate to the fact that on March 3, 2008, Jimenez sent the court a letter explaining and apologizing for his absence from a hearing that date, and enclosing a brief "declaration" outlining his response to the factual

contentions contained in Anson's complaint. The document was received by the court on March 5, and filed by the court on March 8, 2008.

Anson asserts the court should have been disqualified because he "considered and permitted ex parte communications during the proceedings." According to Anson, "[b]ecause the letter was addressed to [the judge] it can be presumed he read it." We indulge no such presumptions. To the contrary, we must presume the court acted properly, and will conclude otherwise based only upon clear evidence in the record. (*People v. Allegheny Casualty Co.* (2007) 41 Cal.4th 704, 718 ["a trial court is presumed to have regularly performed its official duty and acted in the lawful exercise of its jurisdiction."]; Evid. Code, §§ 664, 666.) No such evidence exists in this case.

In any event, even if we believed the court had *read* Jimenez's communication, there is no basis to infer that the court had "considered it" for any purpose or that Anson had somehow been prejudiced by its existence in the court's file. The record demonstrates that the court did accept as true all of the well-pled factual allegations in Anson's complaint, as it was required to do in a default proceeding, and that its judgment in defendants' favor was based solely upon the legal insufficiency of those facts as a basis for awarding damages. [1]

The legal conclusions drawn by the court in reaching its judgment had no connection with the content of Jimenez's communication, and thus its inclusion in the court's file, even if erroneous, provides no basis for challenging the judgment. An error is prejudicial only if "'it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.'" (*Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1069, quoting *Seaman's Direct Buying Service, Inc. v. Standard Oil Co.* (1984) 36 Cal.3d 752, 770.) "There can be no prejudicial error . . . if

[1] Because we presume the court did not consider the content of the communication, we need not address Anson's contention that the "declaration" included therein was legally "defective."

the decision itself is correct." (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 269.)

In this case, we have already determined that the court's judgment was correct based solely on the inadequacy of the allegations in the complaint. The inclusion of Jimenez's letter in the court's file is entirely immaterial to that determination, and thus there is no basis to conclude that a result more favorable to Anson might have been reached in the absence of that letter. It consequently provides no basis for reversal.

IV

In any event, there is an additional legal flaw which would have prevented the entry of any default judgment *in favor of* Anson. Specifically, he failed to either allege a specific amount of damages sought in connection with his contract cause of action,[2] or serve Jimenez and St. Michael's with a statement of damages relating to his personal injury claim prior to entry of their defaults.[3] Thus, at the time the defaults were entered, these defendants had been given *no notice* of the amount of damages being sought from them. In such circumstances, due process prohibits the entry of a monetary judgment in favor of Anson based upon such defaults. (*Petty v. Manpower, Inc.* (1979) 94 Cal.App.3d 794, 798.)

As explained in *Petty*, "Appellant herein was entitled to notice of the amount in controversy. As the record reveals this was not done either by way of a statement of damages ([Code Civ. Proc.,] § 425.11) or request to enter default. The '. . .

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[2] Code of Civil Procedure section 425.10, subdivision (a) requires that a complaint state the facts constituting the cause of action, and "[i]f the recovery of money or damages is demanded, the amount demanded shall be stated." (*Id.*, subd. (a)(1).) The only exception to the requirement that the amount of damages sought be expressly stated is when the action is to "recover actual or punitive damages for personal injury or wrongful death . . . ." In such cases, the amount demanded shall not be stated." (Code Civ. Proc., § 425.10, subd. (b).)

[3] Code of Civil Procedure section 425.11, subdivisions (b) and (c) provide as follows: "When a complaint is filed in an action to recover damages for personal injury or wrongful death, the defendant may at any time request a statement setting forth the nature and amount of damages being sought. The request shall be served upon the plaintiff, who shall serve a responsive statement as to the damages within 15 days. . . . [¶] (c) If no request is made for the statement referred to in subdivision (b), *the plaintiff shall serve the statement on the defendant before a default may be taken*." (Italics added.)

policy underlying all precepts of jurisprudence and protected by our constitutions' is that a defendant must be given notice of what judgment may be taken against him. (*Burtnett v. King* (1949) 33 Cal.2d 805, 808.) This policy is codified in California. In the instant case, the default should not have been taken in the absence of any notice to appellant of the amount in controversy. The meaning of section 425.11 is clear and removes the anomaly between section 580 and section 425.10. [¶] A judgment by default in excess of the amount of the relief demanded by the prayer denies the defaulting defendant a fair hearing and is an act in excess of jurisdiction. (1 Witkin, Cal. Procedure (2d ed. 1970) Jurisdiction, § 204, p. 735; *Wilkinson v. Wilkinson* (1970) 12 Cal.App.3d 1164.) *It would appear that where no specific amount of damages is requested that any amount would be in excess of that demanded.*" (*Petty v. Manpower, Inc., supra*, 94 Cal.App.4th at p. 798, italics added.)

Anson's complaint, even if presumed to be factually correct in all respects, did not state any claims upon which relief could be granted, and did not give defendants proper notice of the damages sought against them. Consequently, Anson was not entitled to recover any damages against either Jimenez or St. Michael's in this case, and the court did not err by entering judgment in their favor.

The judgment is affirmed and Anson is to bear his own costs on appeal.

BEDSWORTH, J.

WE CONCUR:

SILLS, P. J.

IKOLA, J.